

## **Affirmative Action Programs**

ODOT's contracts may include up to at least three different Affirmative Action programs on projects with Federal-Aid funding. Those include:

1. Disadvantaged Business Enterprise (DBE)
2. Equal Employment Opportunity (EEO)
3. On-the-Job Training (OJT)

We will discuss each program separately.

Other programs, such as the Tribal Employment Rights Organization (TERO), may be incorporated into appropriate projects.

For projects that do not include Federal-Aid funds, ODOT may include an OJT Program requirement.

If you have questions about any of these programs, consult the Office of Civil Rights field coordinator\*\* or call the Office of Civil Rights.

At the pre-construction conference, the Project Manager should address the requirements of each of these programs that are included in the project. The Project Manager may request the OCR field coordinator to assist in this. Also refer to discussion on the pre-construction conference in the Before On-Site Work Can Begin section (11) of this Manual.\*\*

The Project Manager must address the issue of how well the Contractor fulfilled its Affirmative Action requirements when completing the required Prime Contractor Performance Evaluation. Refer to the Contractor Performance Evaluation section (34) of this Manual.

### Disadvantaged Business Enterprise (DBE) Program

The Contractor must comply with all requirements of the DBE Supplemental Required Contract Provisions that are included in the contract. Those provisions must be incorporated by reference into all subcontracts that involve DBEs. The DBE Policy statement must be included by reference in all subcontracts.

The Office of Civil Rights establishes the assigned minimum DBE participation goal for each project. They normally involve the Project Manager, late in the project development phase, in determining that goal.

Before ODOT will award a contract to it, the successful bidder must submit its DBE Commitment to ODOT for review and approval. If ODOT approves the DBE Commitment and the bidder fulfills other responsibilities, ODOT will award to and execute a contract with the Contractor, if other requirements are met.

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The Office of Civil Rights will send a copy of the approved DBE Commitment to the Project Manager. The Project Manager must assure that the Commitment is fulfilled during the project.

The Project Manager must secure the concurrence of the Office of Civil Rights before the Project Manager consents to a subcontract that involves a DBE. The Civil Rights field coordinator will generally give that concurrence.

For each subcontract that involves any part of the DBE Commitment, assure that the subcontract includes all of the work assigned to the subcontractor in the DBE Commitment. If any of the subcontracted items involve only a portion of a bid item, assure that the subcontract includes a specific definition of the work to be done by the DBE and that it conforms to the DBE Commitment.

The Project Manager must perform a Commercially Useful Function (CUF) evaluation of each DBE on a project, whether or not the DBE is part of the DBE Commitment. Complete Disadvantaged Business Enterprise Commercially Useful Function Form 3B, form 734-2165, and submit it, with any other needed information, to the Civil Rights field coordinator. See example in Exhibit A pages 1 through 4.

Perform the CUF review:

- Early in the DBE's work when it is performing one or more of its subcontracted items of work, but before the DBE's peak performance period has passed
- Whenever a change in the performance of the DBE occurs
- Whenever a replacement or substitution of a DBE occurs
- Whenever a substitution or change order changes or affects the work to be accomplished by the DBE.

When completing the required Prime Contractor Performance Evaluation, the Project Manager must address whether the Contractor had any CUF violations. See the Contractor Performance Evaluation section (34) of this Manual.

The DBE Supplemental Required Contract Provisions also recite the requirements of ORS 279.445 that the Contractor must pay each of its subcontractors within 10 days after it received payment from ODOT.

The Contractor must complete and submit form 734-2536-Subcontractors Paid-Summary Report, after each payment received from ODOT for each Federal-aid project, certifying payments made to all subcontractors. Form 734-2536 is available on the DBE portion of the Office of Civil Rights section of the ODOT website. The Project Manager should send the submitted completed forms to the Civil Rights field coordinator.\*\*

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The Project Manager must initiate any corrective action needed to prevent violations of the DBE Program.

The Office of Civil Rights retains a consultant to provide Supportive Services to DBEs. If a DBE has need for assistance in bidding/estimating, business development, or technical and project management, refer them to the Office of Civil Rights.

### Equal Employment Opportunity (EEO) Program

The Contractor and its subcontractors must comply with the requirements of the “Supplemental Required Contract Provisions—Affirmative Action Requirements for Women and Minorities” included in all contracts with Federal-Aid funding.

The goal of those requirements is to assure that women and minorities are adequately represented in construction work.

If the Contractor or subcontractor has new hire opportunities and does not have adequate representation of women and minorities in the available craft, it must hire a woman or minority unless it exercised Good Faith Efforts and was unsuccessful. Contact the Office of Civil Rights if you need assistance.

The Contractor and all subcontractors, with subcontracts of \$10,000 or more, must complete a Monthly Employment Utilization Report, form 731-0394 (see example in Exhibit B, pages 1 and 2) monthly. Each affected entity must complete the form for each month that it works on the project and submit the completed form to the Project Manager by the 10<sup>th</sup> of each month. Computer-generated or other forms containing all required information are also acceptable.

The Project Manager must assure that the Contractor has submitted the completed reports by the 10<sup>th</sup> of each month. The Project Manager must submit the completed forms, along with a completed Project Manager's Monthly EEO Report, form 734-3858 (see example in Exhibit C), to the External Workforce Programs \*\* Compliance Officer in the Office of Civil Rights.

The Office of Civil Rights may request the Project Manager to obtain additional information from the Contractor in order to complete an annual EEO report.

When completing the required Prime Contractor Performance Evaluation, the Project Manager must address whether the Contractor had to submit a corrective action plan for the EEO program. See the Contractor Performance Evaluation section (34) of this Manual.

### On the Job (OJT) Program

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The Office of Civil Rights (OJT Program Coordinator) determines when to require OJT on a project. The Project Manager may provide input or information for use in making\*\* that determination.

When OJT is required on Federal-Aid projects, "Supplemental Required Contract Provisions, Federal-Aid Contracts—On-the-Job Training" will be included in the contract. If OJT is required on other projects, similar contract provisions for State funded projects will be included in the contract. The provisions will specify the method of payment for OJT.

The Project Manager is responsible to assure that the OJT requirement is fulfilled. Contact the OJT Program Coordinator\*\* for assistance.

At the pre-construction conference, the Contractor must identify how it will utilize the required OJT positions by submitting a completed Training Program, form 731-0335 (see example in Exhibit D). It may choose to have one or more of its subcontractors fulfill part or all of the OJT requirements.

The Project Manager must obtain the approval of the OJT Program Coordinator\*\* for the Contractor's Training Program.

The Contractor must plan to involve OJT persons early in the timeframe\*\* that other members of the same craft are employed. If the Contractor fails to involve OJT persons early in that time, the Project Manager should suspend work until the issue is resolved.

Before the Contractor can start its OJT work, it must submit a completed Apprentice/Trainee Approval Request, form 731-0294 (see example in Exhibit E), to the Project Manager. If the Contractor requests a trainee other than a minority or a female on a Federal-Aid project, it must submit documentation of a Good Faith Effort.

The Project Manager will obtain the approval of the OJT Program Coordinator\*\* before allowing the Contractor to begin its OJT.

Use a Flagger and Pilot Car Receipt, form 734-3955, or a similar form to record the number of OJT hours for payment. The Monthly Progress Record, discussed below, may be used as the source document for OJT payment if the Project Manager does some cursory review to assure that the training has actually been delivered or performed.

The Contractor and the trainee must complete an ODOT Apprentice/Trainee Monthly Progress Record, form 731-0332 (see Exhibit F, pages 1 and 2), and submit it, by the 10<sup>th</sup> of each month, to the Project Manager for each month in

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which the trainee has performed OJT functions. If the OJT person is registered in an approved apprentice program, the OJT person may submit the apprenticeship program record instead of the completed form 734-0332.\*\*

When completing the required Prime Contractor Performance Evaluation, the Project Manager must address whether the Contractor fulfilled its OJT obligation. See the Contractor Performance Evaluation section (34) of this Manual.